

EDWARD HOLLINGTON  
RICHARD H. PETERSON

IBLA 85-147  
85-152

Decided May 16, 1985

Appeal from decisions of the Alaska State Office, Bureau of Land Management, dismissing petitions for reinstatement of oil and gas leases held to have terminated by operation of law for nonpayment of rental. AA 48598 and AA 48599.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals --Oil  
and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1982). Under 30 U.S.C. § 188(c) (1982), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

2. Oil and Gas Leases: Reinstatement

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as holder of the record of the lease, and not the potential assignee, may petition to have the lease reinstated on the grounds that reasonable diligence was exercised or that the late payment was justified.

APPEARANCES: J. Edward Hollington and Richard H. Peterson, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

J. Edward Hollington and Richard H. Peterson appeal from separate decisions by the Alaska State Office, Bureau of Land Management (BLM),

dated October 23, 1984, dismissing their individual petitions for reinstatement of oil and gas leases AA 48598 and AA 48599. 1/

On May 5, 1983, BLM issued oil and gas leases AA 48598 and AA 48599 to Ron Ewing effective June 1, 1983. The two leases aggregated in excess of 18,000 acres of land. Subsequently Ewing assigned 80 acres of lease AA 48598 to Hollington and 80 acres to Peterson. He also assigned 80 acres of lease AA 48599 to Hollington. The assignments to Hollington dated December 5, 1983, were filed for approval with BLM on March 15, 1984. Peterson's assignment dated August 9, 1983, was submitted for BLM's approval on October 3, 1983. The assignments were not approved.

By letter dated May 22, 1984, counsel for the estate of Ewing advised BLM that Ewing had died on May 8, 1984, and requested information on Ewing's outstanding oil and gas leases. The letter was not processed to the proper unit within BLM until June 1, 1984. The record indicates that in response to this letter a BLM employee attempted to contact counsel by telephone to advise him that certain of Ewing's leases expired on June 1, 1984. The calls were not returned. The employee contacted counsel on June 5 to be sure he understood that he had 20 days to pay the rental and petition for reinstatement. Counsel advised that new counsel had been retained and that he would forward the information. On July 20, 1984, new counsel for the Ewing estate wrote to BLM. Counsel stated that he understood that the time had passed for class I reinstatement of Ewing's leases, and requested information on class II reinstatement. During this time no rental payment for either lease was submitted on behalf of the estate.

On August 14, 1984, BLM issued a decision addressed to the attorney of record for the estate with copies to all of Ewing's assignees 2/ stating that oil and gas lease AA 48598 terminated on June 1, 1984, for failure to pay the annual rental on or before the anniversary date of the lease. An identical decision terminating lease AA 48599 was issued September 7, 1984. In the decisions, BLM informed the estate of the right to petition for reinstatement, and the qualifying conditions for class I and class II reinstatement. 3/

---

1/ Hollington appeals from two separate decisions involving oil and gas leases AA 48598 and AA 48599. Peterson's appeal relates only to lease AA 48598. The appeals of Hollington and Peterson relating to lease AA 48598 are docketed as IBLA 85-152. The single appeal of Hollington concerning lease AA 48599 is docketed as IBLA 85-147. Because the relevant background and critical facts surrounding these appeals are identical, we have consolidated them for consideration.

2/ BLM identified 33 assignees including appellants with interest in AA 48598 and 16 assignees with interest in AA 48599.

3/ Because the rental was not paid within 20 days of June 1, 1984, the anniversary date of the leases, the only avenue available to pursue reinstatement of the leases was class II reinstatement. The BLM decision stated these conditions:

"CLASS II 30 U.S.C. § 188(d) and (e); PL 97-451, Sec. 401(d)

"To be considered for Class II reinstatement, the following conditions must be met:

In response to the termination decisions, Hollington and Peterson filed petitions for reinstatement. The October BLM decisions rejecting their petitions for reinstatement informed them that the lease terminated on June 1, 1984, and that under Grace Petroleum Corp., 62 IBLA 180 (1982), only the lessee of record, not a potential assignee, could petition for reinstatement. Accordingly, BLM dismissed the petitions.

Appellant Hollington in his statement of reasons for appeal contends that he was misled by BLM, <sup>4/</sup> that the decisions are arbitrary and capricious and wrongly interfere with contractual relationships. Peterson states that he paid \$ 6,000 for his 80-acre assignment and that he did not want to lose his investment. He explains that he did not pay his rental because he did not understand the procedures. Both appellants reason that their circumstances warrant reinstatement of their assigned interest in the leases. We understand appellants' frustration and sympathize with their situation, however, we are unable to grant any relief, and have no alternative to affirm the BLM decision.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease in which there is no well capable of production of oil and gas in paying quantities, the lease terminates automatically by operation of law. See 43 CFR 3108.2-1(a). The rental payments for leases AA 48598 and AA 48599 were not paid by June 1, 1984, consequently the leases terminated by operation of law for nonpayment of rental. Under 30 U.S.C. § 188(c) (1982), a terminated oil and gas lease may be reinstated

---

fn. 3 (continued)

"1. The following are filed in this office within 60 days from receipt of this notice:

- (a) petition for reinstatement;
- (b) reinstatement fee for \$ 500 per lease;
- (c) Federal Register publication cost of \$ 142 (a Notice of Proposed Reinstatement must be published in the Federal Register at least 30 days prior to reinstatement); and
- (d) payment of all required rental, including any back rental, and/or royalty which has accrued from the date of termination.

"2. A showing to the satisfaction of the authorized officer that failure to pay was inadvertent.

"3. An agreement to the following new lease terms:

- (a) an increased rental rate of \$ 5 per acre or fraction thereof per year; and
- (b) an increased royalty rate of not less than 16 2/3 percent.

"4. No new oil and gas lease has been issued for any of the lands in the terminated lease."

BLM has not advised that the estate took any subsequent action to preserve the leases under this provision.

<sup>4/</sup> Hollington refers to a BLM form notice dated June 25, 1984, to potential assignees informing them that action on pending assignments was suspended. The notice advised that while the lease was in effect during the suspension

where the rental is paid within 20 days after the date of termination and where it is shown to the satisfaction of the Secretary that the lessee's failure to pay within 20 days of the anniversary date was either justifiable or not due to a lack of reasonable diligence. Maynard J. Bonesteel, 82 IBLA 237 (1984).

[2] Appellants subsequently submitted rental to cover their assigned acreage and seek to have their proportionate share of the leases reinstated. While we have held that potential assignees may pay the proportionate rental to protect their assigned interest in an outstanding lease, said rental must be received prior to termination of the base lease. See Ladd Petroleum Corp., 70 IBLA 313 (1983). Ewing's leases terminated on June 1, 1984. Appellants' rental payment covering their assigned acreage was not received until July 16, 1984, long after the anniversary date. Thus, BLM could no longer retroactively approve their assignments and thereby avoid the effects of 30 U.S.C § 188(b) (1982).

In Victory Land & Exploration Co., 65 IBLA 373 (1982), we affirmed a BLM decision denying a petition for reinstatement of a terminated oil and gas lease filed by a potential assignee. Therein we said:

In Grace Petroleum Corp., [supra], the Board ruled that where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the lessee who is holder of record of the lease, and not the potential assignee, may petition to have the lease reinstated on the ground that reasonable diligence was exercised or that late payment was justified. There are two statutory bases for this holding. Under 30 U.S.C. § 188(c) (1976), as noted above, a terminated lease may be reinstated only if the failure to make timely payment "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." (Emphasis added.) Furthermore, the statutory provision governing assignments, 30 U.S.C. § 187a (1976), states that until approval of an assignment, "the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." Thus, under the holding of Grace Petroleum Corp., supra, it is not relevant whether Victory's efforts to make timely payment of the rental constituted reasonable diligence or justifiable delay. The holder of

---

fn. 4 (continued) period, potential assignees should check with their assignor to learn the anniversary date and determine who would pay the rental. The notice advised that a potential assignee could make payment for their assigned portion of the lease to protect their interest. The notice did not imply that this rental payment would be acceptable should the lease terminate prior to receipt of the payment.

record of the lease did not file a timely petition for reinstatement, and there is no allegation that any action by Guthrie would meet the requirements for reinstating the lease. [Footnote omitted.]

Victory Land & Exploration Co., *supra* at 374-75. As holders of unapproved assignments appellants could not petition for reinstatement of the leases. It is only the estate of Ewing that could exercise the right to file for reinstatement of the terminated leases. The estate elected not to do so. Accordingly BLM properly dismissed appellants' petitions for reinstatement.

Moreover, we must point out that appellants' petitions for reinstatement were made pursuant to class I. Even if considered acceptable, they would have to be denied. The Secretary has no authority to grant reinstatement of a lease under class I where the rental is not paid within 20 days of the anniversary date. 30 U.S.C. § 188(c) (1982). William E. Phalen, 84 IBLA 151 (1985). Thus, quite apart from the inability of appellants to pursue a petition for reinstatement, grant of class I reinstatement is statutorily foreclosed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

James L. Burski  
Administrative Judge.

